

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**JOSEPH BOBICK,**

**Plaintiff,**

**v.**

**Civil Action No. \_\_\_\_\_**

**KEVIN McALEENAN,  
Acting Secretary of  
Homeland Security;**

**and**

**RENE ACOSTA,  
Secretary of  
Department of Labor;**

**Defendant,**

**COMPLAINT**

Plaintiff, by his Attorney, alleges the following:

1. This action is an appeal from a final administrative decision of the Defendants;
2. The Plaintiff has exhausted all administrative remedies;
3. The Plaintiff, who was employed by the Department of Homeland Security as a luggage screener, has resided in Somerville, Massachusetts for all periods relevant to this appeal.

5. The Defendant, Kevin McAleenan, is the Acting Secretary of the Department of Homeland Security;

6. The Defendant, Rene Acosta, is the Secretary of the United States Department of Labor;

7. For all times relevant to this action, the Plaintiff was prescribed opioid pain medication and/or benzodiazepines for a work related back injury;

8. The Aviation and Transportation Security Act, Pub. L. 107-71 prohibits the use of opioid pain medication and/or benzodiazepines while actively employed as a luggage screener;

9. The Plaintiff applied for and was granted Federal Workers Compensation for his back injury from the defendant, Department of Labor;

10. The defendant, Department of Labor later determined that the Plaintiff's condition had improved and he could return to his position as a luggage screener;

11. The Plaintiff was instructed to return to work by the defendant, Department of Homeland Security;

12. The Plaintiff informed the Defendants that he would be violating Federal Law by returning to work as a luggage screener as he was prescribed opioid pain medication and/or benzodiazepines;

13. The defendant, Department of Homeland Security informed the Plaintiff he should retire or would be terminated for job abandonment.

14. The Plaintiff retired on December 31, 2013;

15. The Plaintiff filed a complaint with the US Equal Employment Opportunity Commission and never received a response. This Complaint is deemed denied;

Count I- Breach of Contract

16. Plaintiff incorporates by reference the allegations of paragraphs 1 to 15.

17. By requiring the Plaintiff to return to employment in violation of Federal Law, the Defendants have breached the contract with the Plaintiff;

Count II- Breach of Implied Contract

18. Plaintiff incorporates by reference the allegations of paragraphs 1 to 15.

19. By requiring the Plaintiff to return to employment in violation of Federal Law, the Defendants have breached the implied contract with the Plaintiff;

Count III- Constitutional Violations

20. Plaintiff incorporates by reference the allegations of paragraphs 1 to 15.
21. By requiring the Plaintiff to return to employment in violation of Federal Law, the Defendants have violated the Due Process provisions of the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution;

**WHEREFORE**, plaintiff prays that this Court:

- 1.) find that the Plaintiff is entitled to all wages and benefits from the inability to perform full time employment until the date of retirement; and
- 2.) award attorney's fees under the Equal Access to Justice Act, 28 U.S.C. §2412, on the grounds that the Defendants' actions in this case was not substantially justified; and
- 3.) order such other and further relief as the Court deems just and proper.

Dated at Boston, Massachusetts, this 1st day of May 2019.

“/s/ Michael James Kelley”  
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